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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 TOMMY BROWN,) No. C 13-4424 LHK (PR)
11)
12 Petitioner,) ORDER OF DISMISSAL
13)
14 vs.)
15 WARDEN RANDY GROUNDS,)
Respondent.)
_____)

16
17 Petitioner, a California state prisoner proceeding *pro se*, seeks a writ of habeas corpus
18 pursuant to 28 U.S.C. § 2254. In the underlying federal petition, petitioner challenges a 1993
19 criminal judgment against him, and concedes that he has not raised any claims in the California
20 Supreme Court. On March 24, 2014, the court issued an order to petitioner to show cause within
21 thirty days why the petition should not be dismissed for failure to exhaust state remedies.
22 Petitioner has not filed a response.

23 As the court previously advised petitioner, prisoners in state custody who wish to
24 collaterally challenge either the fact or length of their confinement in federal habeas corpus
25 proceedings are first required to exhaust state judicial remedies, either on direct appeal or
26 through collateral proceedings, by presenting the highest state court available with a fair
27 opportunity to rule on the merits of each and every claim the prisoners seek to raise in federal
28 court. 28 U.S.C. § 2254(b)-(c). The exhaustion-of-state-remedies doctrine reflects a policy of


1 federal-state comity to give the state “the initial ‘opportunity to pass upon and correct alleged
2 violations of its prisoners’ federal rights.’” *Picard v. Connor*, 404 U.S. 270, 275 (1971)
3 (citations omitted). The exhaustion requirement is satisfied only if the federal claim has been
4 “fairly presented” to the state courts. *See id.*; *Peterson v. Lampert*, 319 F.3d 1153, 1155-56 (9th
5 Cir. 2003) (en banc). The state’s highest court must be given an opportunity to rule on the
6 claims even if review is discretionary. *See O’Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999)
7 (petitioner must invoke “one complete round of the State’s established appellate review
8 process.”). A federal district court must dismiss a federal habeas petition containing any claim
9 as to which state remedies have not been exhausted. *See Rhines v. Webber*, 544 U.S. 269, 273
10 (2005).

11 Petitioner has filed a direct appeal to the California Court of Appeal. Petitioner has also
12 filed a state habeas petition to the California Superior Court. However, petitioner’s petition
13 concedes that he has not presented any federal claims regarding petitioner’s 1993 conviction to
14 the California Supreme Court. Thus, it appears that petitioner has not fairly presented his claims
15 in the underlying federal petition of habeas corpus to the highest state court. Accordingly, the
16 court DISMISSES this action without prejudice for failure to exhaust.

17 The federal rules governing habeas cases brought by state prisoners require a district
18 court that denies a habeas petition to grant or deny a certificate of appealability (“COA”) in its
19 ruling. *See* Rule 11(a), Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254. Petitioner has
20 not shown “that jurists of reason would find it debatable whether the district court was correct in
21 its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Accordingly, a COA is
22 DENIED.

23 IT IS SO ORDERED.

24 DATED: 5/6/14



LUCY H. KOH
United States District Judge